IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 747 OF 2003

Prakash Shankar Mohite .... appellant

versus

The State of Maharashtra ... Respondent.

Smt. Latika Nevrekar Adv. for the appellant
Shri P.S.Hingorani APP for Respondent.

CORAM; V.G. PALSHIKAR &
SMT.NISHITA MHATRE,JJ.

DATED; 9TH NOVEMBER, 2006.

JUDGMENT: (Per Palshikar, J.)

1. Being aggrieved by the judgment and order dated 4th March 200d passed by the Addl.Sessions Judge, Ratnagiri in Sessions trial No. 61 of 2002, the appellants named above have preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the advocate for the appellant and the Addl. Public Prosecutor we have reappreciated the evidence oral and documentary and from the reappreciation the prosecution story reveals as under:

3. The accused is the nephew of Gangaram Mohite. There was a dispute according to the prosecution, between the father of the accused and Gangaram. Gangaram has sold some common trees and has not paid anything to his younger brother Shankar. Shankar was annoyed because of the same. There was also a quarrel between deceased Gangaram and the accused on account of fetching of the water from the municipal tap. Accused has threatened Gangaram to take revenge. In the night of 21-5-2002 Gangaram and his daughter Seema were only at the house. Gangaram was sleeping in the varandhah of the house which is called as Padavi. Seema was sleeping in the Oti of the house, the inner room adjacent to Padavi. In the night, at about 9.00 to 9.30 p.m. Gangaram got up from the sleep because of the receiving of a heavy blow over the head. He found the accused standing nearby him with some weapon. Gangaram then fell unconscious. He was then immediately taken to the hospital at Kamathe. Police complaint was accordingly lodged, investigation was conducted and the accused has prosecuted for offence under section 302 of IPC.

4. The prosecution examined 10 witnesses to prove its case and the learned trial Judge, taking into consideration the oral and documentary evidence on record, came to the conclusion of guilt. Consistent

with that conclusion, he convicted the accused under section 302 of IPC and sentenced to suffer R.I. for life. It is this order of conviction and sentence which is impugned in this appeal as aforesaid.

5. P.w.1 Seema is the daughter of deceased and was present in the spot, when the assault took place. She was sitting with her father Gangaram in the same house and was awakened from the sleep by the shouts of her father. She therefore got up and saw that the accused was holding some weapon and was hitting the victim. The accused thereafter left. He has deposed to what she saw. Her cross examination though lengthy does not result in any manner weakening the testimony given by the witness. There was long standing enmity between the accused and the victim, is also duly proved and it is because of that enmity the attack had taken place is thus established.

6. P.w.2 Dilip, P.w.6 Shivaji are the panchas who proved the panchanamas of recovery, seizure etc. P.w.8 Prakash is the police official who recorded the dying declaration of the victim which is proved by him at Exh.14. It is pertinent to note here that the incident had taken place on 21-5-2002 and the victim died on 30th June 2002, i.e. after one month and ten days. In the dying declaration which is duly proved, the victim

has given the clear statement that he was awakened from the sleep on being hit on the head by someone. He then got up and saw the accused had some weapon in his hand and was running away. This dying declaration is duly proved, which bears the certificate of the doctor who has certified that the witness was through out recording of the statement was conscious and was in a position to give statement. It is also clear from the statement that the victim speaks of only single blow. To the same effect is the version of P.w.1 Seema the daughter of the victim.

7. That the death of Gangaram was homicidal is proved by the doctor, who examined as P.w.9 by the prosecution. The prosecution has also examined the doctor who has conducted the post mortem and the doctors who attended the victim Gangaram from the date of his admission to the hospital to the date of his death. P.w.4 Dr. Enas, P.w.7 Dr. Sanjay and P.w.9 Dr. Sunil are the doctors. From their testimony it is obvious that the injury of serious nature was caused to the victim and it was caused by single blow. P.w.5 is the neighbouring witness and P.w.10 is the investigating officer. We have re-appreciated the entire evidence and in our view no fault can be found with the apppreciation done by the learned trial Judge. The prosecution has succeeded in proving beyond

reasonable doubt that it was the accused who hit the victim. However, the question as to what offence is committed remains. The prosecution itself has proved that the victim died after one month and more days after the assault. According to the learned counsel appearing on behalf of the accused, it is submitted that the prosecution has failed to prove any intention on the part of the accused to commit murder of the victim. The accused administered single blow and left the place. He did not wait to see the effect of injury nor he wanted to know whether the injury caused death or not. The very fact that the victim lived for one month or more thereafter speaks of lack of intention to commit murder.

8. In our opinion the contention is liable to be accepted for the reason that the accused gave only a single blow and left the place. There are several decisions of the Supreme Court of India, where it has been consistently held that in case of such single blow, not resulting in instantaneous death, conviction under section 302 IPC may not be proper. Taking into consideration the totality of the circumstances, we are of the view that proper order of conviction would be under section 304-I IPC as the accused never knew that the blow was very likely to cause death. In our opinion interest of justice would be met if the order

of conviction and sentence under section 302 IPC is set aside and instead accused is convicted under section 304-I of IPC and sentence to suffer R.I. for ten years. He is also convicted under section 452 of IPC and we see no reason to interfere with that conviction and sentence. The learned trial Judge has already ordered that the sentences to run concurrently. No different order in such circumstances is necessary. In the result, the appeal succeeds partly and accordingly allows partly. The order of conviction and sentence under section 302 IPC is set aside. Instead the appellant/accused is convicted under section 304(I) IPC and is sentenced to suffer imprisonment for a period of ten years. Appeal accordingly stands disposed of.

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